

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

WENDELL L. PETTRY,

Plaintiff,

v.

Case No. 2:11-cv-00393

WARDEN DAVID BALLARD,

Defendant.

PROPOSED FINDINGS AND RECOMMENDATION

In an Order entered June 23, 2011 (ECF No. 4), the undersigned set forth the plaintiff's litigation history and found that while he was incarcerated or detained, the plaintiff had filed at least three actions in a court of the United States which were dismissed as frivolous, malicious or for failure to state a claim. The undersigned also found that this case does not allege any facts which indicate that the plaintiff is under imminent danger of serious physical injury. Accordingly, pursuant to the provisions of 28 U.S.C. § 1915(g), the Court denied the plaintiff's application to proceed without prepayment of fees and costs and directed him to pay the \$350 filing fee, in full, by July 29, 2011. As of this date, the plaintiff has failed to pay the \$350 filing fee.

The undersigned proposes that the presiding District Judge adopt the findings in the Order entered June 23, 2011, and find

that the plaintiff has failed to pay the \$350 filing fee in this case. It is respectfully **RECOMMENDED** that this case be dismissed without prejudice.

The plaintiff is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable John T. Copenhaver, Jr., United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b) (1) (B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the plaintiff shall have fourteen days (filing of objections) and three days (mailing) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to Judge Copenhaver.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to the plaintiff.

August 17, 2011

Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge